



## **MINUTES OF THE LAND RECLAMATION COMMISSION MEETING**

July 22, 2004

Chairman Jim DiPardo called the meeting to order at 10:00 a.m. at the Missouri Department of Natural Resources, 1738 East Elm Street, Jefferson City, Missouri.

**Commissioners Present:** Jim DiPardo; Hugh Jenkins; Mimi Garstang; Jim Hull; Bob Ziehmer; and Dr. Gregory Haddock.

**Staff Present:** Larry Coen; Tom Cabanas; Richard Hall; Mike Larsen; Bill Zeaman; Richard O'Dell; Larry Hopkins; Andy Reed; Mike Mueller; and Shirley Grantham.

**Others Present:** Amy Randles, Attorney General's Office; Charles Sandberg, Mid-Continental Regional Director, Office of Surface Mining; Andy Gilmore, Chief, Alton Field Division, Office of Surface Mining; Jeff Jarrett, Director, Office of Surface Mining; Dan Upp, Associated Electric Coop., Inc.; Mikel Carlson, Gredell Engineering; F. A. DeCuyper; Steve Rudloff, Missouri Limestone Producers Association; John Bryant, Norris Asphalt Paving Company; John and Elaine Van Dyken; Harold and Caroline Hess; Nicholas J. Garzia; Gregory S. Conrad; Paul Boudreau; Michelle Fields; G. Michael Hartley, White Rock Quarries; Richard Brownlee; Mark Kempker; Judy Inslan; Mike Manier, Houston Redi-Mix; Jerry L. Foster; Gary Tillman, Tillman Sand and Gravel; Travis and Tracy Wunderlich; Greg Anderson, Water Protection Program, DNR; John Randall, Attorney General's Office; and Tommy Crouch and Mike Kufrovich, Capital Quarries.

### **1. MINUTES OF THE MAY 27, 2004, MEETING**

Dr. Haddock made the motion to approve the Minutes as written. Ms. Garstang seconded; motion carried unanimously.

### **2. ABANDONED MINE LAND ACTIVITIES**

**AML Status Report** (Attachment 1). Mr. Cabanas stated at the Perche Creek Project, the earthwork is mostly complete, with some pond work remaining. Seeding should be completed on this project this fall. Regarding the Miller's Creek Project, bids were opened on May 27, 2004. The low bid went to Terradyne LTD for the amount of \$487,011.00. The notice to proceed was sent to the contractor, and work has started on this project this week.

Mr. Cabanas stated that under the Non-Coal Shaft Closures, regarding the Joplin Shafts Phase III Project in Jasper County, this project is now complete. An additional shaft was

added to the project for an amount of \$10,000.00. Mr. Cabanas stated that several more shafts have been identified in the area and will probably be addressed this fall with an under \$25,000.00 contract.

Mr. Cabanas stated regarding bond forfeiture reclamation projects, under the state reclamation projects, the main work being done this summer is at Missouri Mining located in Putnam County. Pits 17 and 15 are being done as one project because they are in proximity to each other. The project was awarded on June 28, 2004, to Chris Muhs Trucking & Excavating of Stockport, Iowa, for a bid of \$98,499.00. Work should be started by the end of July with completion scheduled for this fall. Work to be done consists mainly of deep gully repair and pond renovation. Regarding Pit 12, it is planned to do repairs to a breached pond this summer to correct an off-site impact. It is hoped that the remainder of the project can be done this summer if time allows. At Pit 14 North, work will begin to repair one large gully and distribution of a topsoil stockpile. A shallow pond may be modified to create a deeper one if the landowner approves. A pre-bid conference was held on June 30, 2004, with bid submittal closing on July 7, 2004. The staff is awaiting the Office of Administration's approval to award this under the \$25,000.00 contract. Regarding Pit 14 South, plan development is still ongoing.

Mr. Cabanas stated with regard to Universal Coal & Energy, Pit 4, a pond maintenance contract was awarded for \$12,800.00 on May 25, 2004, to Danny Koenig. There is work done on this project.

Mr. Cabanas stated regarding the "Surety Reclamation Projects," a reclamation plan has been approved for the Midwest Coal Tiger Mine in Bates County. Notification has been sent to the surety. Reclamation is expected to start this month with completion of the work by this fall. Regarding Riedel Energy in Ralls and Monroe Counties, the consultant has finalized the reclamation plan for this very large mined area and are in the process of selecting a contractor. Work at the site is to begin this summer and is mainly associated with land use issues, ponds, other engineering structures, gully repair, proper burial of coal wastes, and revegetation issues. The three projects--North American Resources, Silver Creek Mine in Randolph County, North American Resources, Foster Mine, located in Bates County, and Universal Coal and Energy, Renick Mine, located in Randolph County are currently involved in maintenance. It is hoped that these three projects will be completed by the end of this calendar year.

### **Office of Surface Mining (OSM) Introductions**

Mr. Charles Sandberg, Mid-Continental Regional Director; Mr. Jeff Jarrett, Director, Office of Surface Mining; and Mr. Andy Gillmore, Chief, Alton Field Division were introduced to the Commission. It was noted that this is the first time the Director of the Office of Surface Mining has visited Missouri.

Mr. Jarrett stated there are two very important issues: meet with Mr. Mahfood, the Director of the Department of Natural Resources, and to do what we can to make sure that Missouri resumes the operation of its regulatory program with regard to the coal industry. He stated his primary purpose for this trip is to talk about the Abandoned Mine Land Program. The Federal Abandoned Mine Land Program's authority to collect fees expires on September 30, 2004. The Federal Government assesses a fee against the mining industry (35 cents for surface production and 15 cents for underground production) which is given out to the states in the form of grants to reclaim abandoned mine lands. In this context, this would be mines which were mined and left unreclaimed prior to 1977, before the law required the sites be reclaimed. It is a critical program nation-wide. There are about 3.5 million people who live within very close proximity to the most dangerous mines, priority 1 and priority 2 mines. There are people who die every year because of these sites. Mr. Jarrett stated that last February, the Bush administration had a proposal introduced in Congress to not only reauthorize our authority to collect the fees, but to make some other needed reforms to that program. It is a program that has accomplished a lot, but over time, the way the law requires us to spend the money is a little wasteful. Today, 52 cents out of every dollar is spent for construction work to abate the most dangerous sites in this country. Some think that is a great track record. Mr. Jarrett stated he did not think so. He stated that in addition to reauthorizing the program, we need to reform the program to give us the authority to get that money out to the states where the problems are the greatest. In response to the legislation that we introduced, there have been six other bills introduced, so there has been a total of seven bills that have been introduced either to the House Resource Committee or to the Senate Energy Committee. Each of those bills recognizes the fact that the way the money is being allocated under the current law is broken. Each of those bills takes a different approach to addressing that problem, and each of those bills does, in fact, address that problem to varying degrees. The most important thing is that we get the program reauthorized. We have seven bills in two committees, none of them have gone to mark up (have not been placed on the table for Congress to start debating on what the final bill ought to look like). Mr. Jarrett stated he is here today to bring attention to this issue because we think it is a critical program and is critical to Missouri. Missouri has about \$40 million worth of high priority abandoned mine sites. These are the pre-1977 sites. It would take about \$48 million to reclaim all those sites, and there are about 37,000 people who live very close to those sites. Those people should be protected. He stated he will be out looking at some of the great work that the Missouri AML Program has already done and also look at some sites that are yet to be done and bring media attention to this problem so that we can get something moving in Washington. This is a program we do not want to lose. The good news for Missouri is that, while there is a large disagreement and debate about the various proposals that have been introduced, to date, each proposal treats Missouri the same. Missouri is a minimum program state, so under all of the proposals, Missouri's program funding would increase from about \$1.5 million to \$2 million a year. The proposals

differ in how long that funding would continue. Mr. Jarrett stated that under the administration's proposal, that funding would continue for Missouri based on Missouri's current inventory for 25 years, at which point in time, the state would have completed all of its high priority AML reclamation projects. Realistically, this is an election year, and it appears less than optimistic that we are actually going to get a fair, open, and honest debate about these important issues. What we are now encouraging Congress to do is to give us at least a one-year extension of the AML program so that we can get beyond the election next year when people are more willing to sit down and have the kind of debate that we think we need to have to reform the program the way it ought to be. He asked for the Commission's support to be able to make this happen.

Ms. Garstang asked Mr. Jarrett, on the national level, how much of the AML work is completed?

Mr. Jarrett stated that on the nation level of what we have on our inventory (which is not a federal inventory, it is a compilation of all of the state inventories), there are \$3 billion worth of priority one and priority two abandoned sites, health and safety sites, on the inventory. That does not include the engineering, designing, monitoring, or contracting costs associated with that, so it would take about \$3.8 billion to reclaim the high priority health and safety problems. In addition to that, we have another \$3.6 billion of high priority general welfare problems. The distinction is that the health and safety problem would be those sites where people physically visit the site, get injured, get killed; and the high priority general welfare sites would be sites where the environmental impact is so severe that it negatively impacts the health of the people living in the community. So, \$6.6 billion just construction costs on top of that and an estimated about \$23 billion additional environmental costs. So to take care of the health and safety and the environmental problems, it would cost close to \$30 billion.

Ms. Garstang asked what percent of that whole work that needs to be done is left to do?

Mr. Jarrett stated about \$3 billion worth have been completed with another \$23 billion to go. The problem is that, in talking with people in the Congress, the mining industry, citizens' organizations, there is one common complaint--there doesn't seem to be any progress being made. There are a lot of reasons why they thought it didn't seem like we were making progress. One is that, as we discovered and identified dangerous sites, they were added to the inventory. Probably the biggest reason that the inventory hasn't changed in terms of the percent that have been completed is urban sprawl where there are dangerous sites that are dangerous sites that are out in the middle of nowhere, not in close proximity to where people live, work, or recreate. All of a sudden people are building communities near these sites so they are increased to a higher priority on the inventory. The problem is that the current law tells us how we have to give the money out to the

states. Mr. Jarrett stated that what the law states is that of all the money that we give out to the states, 71 percent of that money has to be given to the states, based on where the income is generated. The problem simply is that where the income is being generated is not where the problems are. So we are trying to change that formula so we can take the money, spend it where the problem is, and get the job done.

3. PERMITTING

**In Re: Alternate Fuels, Inc., Show Cause Order No. 2500.** Mr. DiPardo noted that the record is closed on this issue and that action will be taken by the Commission today. He stated the Commission had before it three proposed Findings of Fact for its consideration.

Mr. Hull stated that this matter has gone on for some period of time and that everyone concerned would like to see progress made on this issue. He made the motion the Commission adopt the third draft version of the Findings of Fact, Conclusion of Law and Final Order (Attachment 2). Dr. Haddock seconded. The Commission voted as follows:

Ms. Garstang	Yes	Mr. Hull	Yes
Dr. Haddock	Yes	Mr. Ziehmer	Yes
Mr. DiPardo	Yes	Mr. Jenkins	Abstained

The motion carried.

**Industrial Mineral Hearing Requests:**

**Norris Asphalt Paving Company, Transfer from Martin Marietta, Breit Quarry** (Attachment 3). Mr. O'Dell noted that action on this hearing request was tabled at the May 27, 2004, Commission meeting. On June 29, 2004, one of the requests for a hearing was withdrawn--by Edward and Stacey Counts. However, one request for a hearing still remains. Additional information as presented at the May 27 meeting is included in Attachment 3. Inasmuch as Norris Asphalt Paving Company has completed all the requirements to obtain a permit transfer under The Land Reclamation Act, it is the Staff Director's recommendation that the permit be issued to Norris Asphalt.

The other person requesting the hearing was not present.

Mr. DiPardo stated that at the May 27 meeting, there was some discussion that the company might be mining in an unpermitted area. Was that true?

Mr. O'Dell stated he did an inspection of the site in June, and he found that the company was operating off the permitted area and was issued a Notice of Violation for that. That

violation does remain unabated until the matter before the Commission gets resolved. Mr. O'Dell stated the company has submitted all of the paper work needed to abate the violation.

Mr. DiPardo asked if the company was mining on that area now?

Mr. O'Dell stated the company had done stripping operations such as pushing trees, topsoil removal, and some overburden removal. The company has not actually started mining, just getting ready to mine.

Mr. DiPardo asked if the company has stopped operations?

Mr. O'Dell stated the company was informed to cease all operations on that area until it received a permit. The company was allowed to go in and do some stabilization methods, such as silt fencing, seeding, diversion creation.

Mr. Bryant, Norris Asphalt Paving Company, stated it has stopped all operations on the area and has done the stabilization.

Mr. Hull noted that he had made the motion at the May meeting to table the issue of a hearing request to allow further information to be presented to the Commission by Mr. and Mrs. Counts. Was any additional information submitted or did the company contact Mr. and Mrs. Counts to resolve any of the issues that they expressed concern about at the last meeting?

Mr. Bryant stated the company did contact Mr. and Mrs. Counts and has resolved their issues.

Mr. O'Dell noted that Mr. and Mrs. Counts had provided to the staff some additional information, but once the issues with the company were resolved, withdrew their request for a hearing.

Ms. Garstang made the motion that, in light of the fact that most of the adjacent landowners' concerns have been addressed, the Commission approve the Staff Director's recommendation to issue the permit. Dr. Haddock seconded; motion carried unanimously.

**White Rock Quarry, New Permit Application** (Attachment 4). Mr. O'Dell stated the staff received a new permit application from White Rock Quarries on March 8, 2004. The company published a public notice in a newspaper that has circulation in the area and sent, by certified mail, a notice of intent to operate a surface mine to the appropriate

county officials as well as adjacent landowners. Mr. O'Dell stated the application proposes that the company will obtain a new permit to mine limestone on 83 acres of land located in Lincoln County, Missouri, and that the site will be in operation until March 26, 2054. During the public comment period, the Program received three letters concerning the proposed new permit application. Issues of concern expressed in the letters were property devaluation, blasting, sedimentation/water pollution, dust, noise, road safety, and safety barriers. White Rock Quarry has completed all the requirements to obtain a permit under The Land Reclamation Act. Therefore, after consideration of the issues and comments stated in the letters, the Staff Director recommends issuance of the permit to White Rock Quarry. The recommendation for approving this application is based on the conclusion that the public's health, safety, or livelihood will not be unduly impaired by the issuance of this permit. The balancing test stated in the declaration policy of The Land Reclamation Act does not weigh against the surface mining of minerals in this instance; therefore, the recommendation is to approve this application.

Mr. Gregory Conrad, a resident in the area of the proposed quarry, stated he felt he would be the most affected by the proposed operations at White Rock Quarry. He also stated that he was not opposed to the quarry, but he felt there were some issues that need to be addressed before the quarry opens: 1) He stated he has eight 3-and 4-acre lots next to the proposed quarry site on which he had planned to build homes to sell. He noted he would have to tell potential buyers about the quarry under the State of Missouri seller disclosure laws. This will certainly hinder his selling those homes. Four of these lots run along the edge of the quarry property. 2) Mr. Conrad stated his home is located in this area too, approximately 350 feet from the property line where the quarry is going to be at. 3) He stated he had some concerns about the blasting. He stated quarries do not bother him. He stated he is concerned about the safety and the land value. Mr. Conrad stated he also owns J & J Boarding Stables, registered with the State of Missouri, fictitious name, and has for 13 years which resides on the same property as part of the development that he was going to put there. If the quarry opens up, any noises, etc., could set off the horses. The State of Missouri has drafted a law to protect horse professionals from lawsuits because of inherent dangers of dealing with horses. He was concerned if the operator set off a blast and a horse being boarded there goes crazy, he would be sued, not the operator. Mr. Conrad stated he has eight children who live near him. He is concerned about their safety as a result of the blasting. When blasting occurs, stuff flies. Mr. Conrad stated he felt there should be a public hearing to address these issues before the permit is issued. He stated he built his home about one year ago. He was planning to build homes on the plots of land. Once a potential buyer is told that there might be a quarry in the area, that person would walk away. He stated these homes would be in the price range of \$200,000.00. He stated he wanted to build the homes in conjunction with the stables as a common community for the horses. Now this venture is in jeopardy, something which he has worked on for 13 years. The quarry would probably provide some jobs for the area.

Mr. Conrad stated he does not want to unduly hold up the permit, but felt that there should be a public hearing before the permit is issued. He noted that each of his lots is valued at \$30,000.00 to \$35,000.00 each. He stated other persons in the area have voiced their interest in participating in a public hearing. He stated he would like to know how flyrock will be addressed, seismic damage to their home, dust. Mr. Conrad stated he would like to have White Rock Quarry pay for a seismic study for everybody with a foundation home.

Mr. Coen noted that Mr. Conrad is requesting a formal public hearing which is like a courtroom proceeding and takes months to carry out. He noted that Mr. Conrad might be asking for a meeting to discuss these issues.

Mr. Conrad stated that everything he has worked for up until now is down the tubes. What he paid for the property and what it is worth now and with the time and effort he has put into it, he is losing money. He stated he felt the operator did not mean to do this and that quarrying is his business. Mr. Conrad stated he wanted to protect himself and his family who have worked for 13 years to have what they have. He stated he would like to see a meeting with the operator to hear how he would address the concerns he and others have and have some kind of public record of how the operator will respond to them.

Mr. O'Dell noted that several persons had requested a public meeting with the operator, but the operator declined to participate in a public meeting.

Mr. Hull stated the mine plan indicates that the proposed site had previously operated as a limestone quarry under a different operator?

Mr. Hartley, White Rock Quarry, stated the original quarry operated until the mid to late 1980's. Reclamation of the site then took place around 1994. He stated he purchased the quarry in 1995. Mr. Hartley stated he wanted to operate the quarry according to the way it is supposed to be done and that he was willing to meet and talk with Mr. Conrad.

Mr. Ziehmer asked whether it would be an option for the Program staff to attempt to set up another public meeting?

Mr. Coen stated that anything might be an option. The law gives the operator the right to refuse that meeting and has refused that meeting. What is before the Commission today is whether or not to hold a formal public hearing. However, if all parties would agree to a public meeting, the staff would be glad to work with the operator to set it up.



Mr. DiPardo stated that the issues of property devaluation, dust, noise, and blasting are out of the Commission's authority. He noted that the operator had indicated he would be willing to talk with Mr. Conrad.

Mr. Coen stated that some operators refuse to agree to a public meeting because they need to get their permit, and if they can come to the Commission and get through the issue of a formal hearing request, then they get their permit if a hearing is not granted. If the operator agrees to a public meeting, then if someone still requests a formal public hearing, then the operator has been delayed 2-4 months. That delay is the reason that most operators use to not agree to a public meeting unless the meeting would settle everyone's issues.

Mr. Hull made the motion to deny the request for a public hearing and that the permit be issued to White Rock Quarry and encouraged the parties to get together and discuss the concerns in an attempt to resolve them. Ms. Garstang seconded; motion carried unanimously.

**Capital Quarries, Transfer from Eugene Quarry** (Attachment 5). Mr. O'Dell stated the Program received a permit transfer/expansion application from Capital Quarries in April 2004. The application proposes that the company will transfer and expand a permit to mine limestone on 183 acres of land located in Cole County. Planned operation at the site will be until November 27, 2023. The company published a public notice in a newspaper of general circulation in the area and sent by certified mail a notice of intent to operate a surface mine to the appropriate county officials as well as adjacent landowners. During the public comment period, the Program received three letters concerning this proposed transfer/expansion application. Concerns expressed in the letters included property devaluation, blasting, sedimentation/water pollution, and safety considerations. Capital Quarries Company has completed all the requirements to obtain a permit transfer/expansion under The Land Reclamation Act. Therefore, after consideration of the issues and comments stated in the letters, the Staff Director recommends issuance of the permit to Capital Quarries Company. The recommendation is based on the conclusion that the public's health, safety, or livelihood will not be unduly impaired by the issuance of this permit. The balancing test stated in the declaration policy of The Land Reclamation Act does not weigh against the surface mining of minerals in this instance; therefore, the recommendation is to approve this application.

Tracy Wunderlich stated their property adjoins the extended mining area. She presented some pictures for the Commission's review. Their house is less than five years old and is only 100 feet from the mining permit area. She noted that they were not originally notified by certified letter of the proposed expansion due to the 50-foot buffer zone that the company had included in the permit. Not until it was realized that their property actually touches the mining area were they notified.

Mrs. Wunderlich stated one of their big concerns is the safety of their three small children such as flying debris and open pit areas. Their back yard fence is only 50 feet from the permit area which is in the buffer area the company included. They do have a concern about flying rock from the blasting. Their second concern is that their well is only 30 feet from their back fence. Being that close, Mrs. Wunderlich could not understand how the blasting would not affect their drinking water. She stated she contacted a well drilling company who indicated that it is very possible that it could result in contamination or cloudiness. She stated another concern is the hours of operation. There should be some kind of regulation that would prohibit operation starting at 6:00 a.m., six days a week. She stated with the already noise from the operation, she can't imagine what it would be like only 50 feet from their home. Mrs. Wunderlich stated the school at Eugene is also an adjoining property. The school is not air conditioned, so the windows have to be left open. She stated she did not know how the drilling and blasting will affect the school room behavior. If a student or teacher has problems with allergies or asthma, they would probably be affected by the operations. Mrs. Wunderlich stated that the issuance of this permit without further research with implications for their community and themselves does, in fact, impair their health, safety, and livelihood.

Judy Imsland stated she is also an adjacent property owner. She passed out some pictures for the Commission's review. She stated the property was owned by someone who has not quarried it for some 30-40 years. She stated therefore the quarry was not an issue when they moved to the area in 1977. Since they moved to the area, their property has increased in value. The community is growing. New subdivisions have been built. She also expressed the concern about the school. Ms. Imsland stated she has enjoyed the wildlife and quietness of the area. She stated their 6-acre property will adjoin the mining operation on two sides if the permit is issued. Their house is closer than the 50 feet to the property line, and her road is closer to the property line than the Wunderlichs'. The property values have already diminished. She stated she has lived in the area for 27 years and has noticed shaking and pounding, windows moving, from the blasting, as well as dust and changes in the water quality. She stated she also owns adjacent acreage which she had plans to subdivide. She stated she had taken out a second mortgage to build a lake home, hoping to have enough money from selling their current home to finish the lake home and retire. She did not see that happening now if the permit is issued.

Ms. Garstang noted that Ms. Imsland had indicated that her well has been impacted. Could she explain what that impact is?

Ms. Imsland stated the water gets very white and chalky. It usually doesn't last more than about a day and then it goes away, but there is a lot of sediment around the sink and the tub. They do have a water softener, but it doesn't totally help.

Ms. Garstang asked if this happens infrequently or constantly?

Ms. Imsland stated infrequently. She noted they usually have very good water.

Dr. Haddock asked, since this is a transfer, has there already been quarrying in operation?

Mr. O'Dell replied yes.

Mr. Mikel Carlson, Senior Geologist for Gredell Engineering Resources, a consulting firm located here in Jefferson City, stated that Capital Quarries is a relatively large quarry operation here locally in Jefferson City and surrounding area. The company currently has under permit 20 different sites operating in ten different counties here in central Missouri. They currently have under permit and bond at the present time approximately 784 acres of ground, and under a long-term mine plan, the company has an aggregate total of 2,800 acres of ground. He stated he has worked as a consultant for Capital Quarries since 1995 and has been involved in almost every Land Reclamation Program related permit transaction that the company has had since that time, including the current permit transfer before the Commission. He noted that most of the permit applications, revisions, renewals have gone through a public notice process. In the past nine years, he stated this is the first time an issue has arisen regarding one of these permit transactions. Mr. Carlson stated this is a transfer of an existing site and is currently under an 8-acre permit and bond and also has a long-term mine plan area of approximately 18 acres. It also involves an expansion in addition to the existing quarry. There was an existing quarry at this site some 30-40 years ago. Mr. Kempker, the current operator of the site under the Eugene Quarry name, has been operating this site for approximately 8-9 years. He also owns the land that the quarry is located on. Prior to him, there was another operator. One of the important things to note is that this is an existing quarry site. Capital Quarries has expressed an interest in enlarging the site to include most, but not all, of Mr. Kempker's property. Capital Quarries' proposed long-term mine plan for this area is approximately 183 acres. Mr. Carlson stated as part of the notification process, ten adjoining landowners were notified. Mr. and Mrs. Wunderlich purchased their property from Mr. Kempker about 5 years ago, while the quarry was in operation. Mr. Carlson noted that regarding Mrs. Wunderlich's statement that she had not initially been notified of the proposed transfer/expansion, one of the resources companies rely on to obtain adjacent landowners' names and addresses for the purpose of sending the notification letters is the county plat book. He stated the Wunderlichs' property did not show up on the county plat book, for whatever reason. When this omission was brought to his attention, Mr. Carlson stated a notification was sent immediately to the Wunderlichs as well as her grandparents who live adjacent to them. He stated that people sometimes have misconceptions that the quarry is there and that it will be a functioning active operation 24 hours a day, 365 days a year. Capital Quarries does have several of these

quarries in the Jefferson City area. Mr. Carlson stated, however, some of the quarries further out, can be referred to as satellite quarries, can be characterized as a job site. At these sites, Capital Quarries may operate the site for a short period of time, they may fulfill a contract, and the site may lie silent for a period of time until the next rock contract comes up to which, economically, this quarry is a benefit to it. Mr. Carlson stated he wanted to dispel any concern that the Eugene site will be a continuing 24-hour a day, 365-day a year operation. That is not intended by the company.

Mr. DiPardo asked how much mining is currently going on at the site? Is the operation five days a week, 8-5?

Capital Quarries indicated it depends on the time of the year; it could be 5-6 days a week, perhaps 7:00-4:30. Drilling could start as early as 6:30 a.m. or 7:00 a.m.

Mr. Carlson noted that this expansion is not going to result in any increase in the volume of truck traffic. The truck traffic that does enter this quarry site enters it off Highway 17. Another person (Lola Hoskins) who expressed a concern regarding this proposed transfer/expansion did not request a hearing but did request that she be kept informed of the process. She owns quite a bit of property to the east of the site. He stated that the school building noted in the earlier concerns was notified, and to his knowledge, no response has been received from the school district regarding this matter. Mr. Carlson noted the other issue of concern is blasting. He stated he is of the understanding that no explosives will ever be stored at the Eugene site. He noted it was his understanding that Capital Quarries does not keep explosives anywhere and that they hire a contracting firm to do the work. This does away with this liability. He noted there is a zigzag in the mine plan boundary that runs away from the Wunderlich property. By regulation, the company is required to maintain a 50-foot buffer. One of the conditions that Mr. Kempker had required of Capital Quarries was, in addition to that 50-foot buffer, to stay away another 75 feet. So this would be a 125-foot buffer between the Wunderlich property line and the mine plan boundary.

Ms. Garstang asked if this was just at this one area or all the way around?

Mr. Carlson replied that it is just at this one area, as submitted in the application. He noted that the reason Capital Quarries did not pursue the option of a public meeting, when this potential issue was brought to his attention, prior to any formal written petition to the Program Staff Director on the part of the Wunderlichs or the Imslands, a representative from Capital Quarries came to meet with these individuals on an informal basis to hear what their concerns were and to try to work something out. Mr. Carlson noted that in the nine years he has done work for Capital Quarries in dealing with their multiple issues, including public notices here in Jefferson City, the company has done a

very good job in being able to sit down with their neighbors and try to talk things out ahead of time so that it does not have to come before the Commission. Mr. Carlson stated that has not happened in this instance, even though the company has gone beyond what the regulatory minimum is insofar as a buffer is concerned, specifically with regard to the Wunderlichs.

Mr. DiPardo asked what happened at the meeting between the company and the landowners?

Mrs. Wunderlich stated that representatives from the company came out and met with them. She stated there may be a little mistrust because, as was noted, an old plat map was used. However, the letter she was sent apologized for not including them in the original mailing and "that was because of the proposed configuration of the long-term mine plan boundaries, which do not appear to physically touch your property and based on our current understanding of the term 'adjacent landowner' as currently defined....However, in an effort to be as complete as practicable, the letter previously sent to your neighbors is included in its entirety...." She stated that is what led her to believe it was because of that buffer. At the meeting, things were discussed; and the Wunderlichs never seemed to get called back. She stated she had to call the company. She stated she brought up distances, but there was no agreement on the distances. She understood that the company had told their neighbors that the Wunderlichs had agreed on 200 feet, which was not the case. A buy-out was also discussed, but she stated they were informed that was not an option. She stated there have been a lot of non-returned phone calls, stringing them along as to what was going on.

Ms. Imsland stated that when a representative from Capital Quarries came to their home, he told them that the best thing that could be done was for Mr. Kempker to buy their property. So, she contacted Mr. Kempker, but received no response. She noted she was not satisfied with the attitude of the company representative.

Mr. Kempker noted that he did not receive that message.

Mr. Carlson stated that Capital Quarries has demonstrated over the years, numerous times, on numerous occasions, that they do, in fact, have the ability to operate in a fashion consistent with Missouri's law and regulations promulgated by the Department of Natural Resources. The company strives to be a good neighbor and will try to work with people within the confines of reasonable requests. He noted that he had not heard anything new today to what has already been considered by the Staff Director in his recommendation to the Commission. Mr. Carlson requested that the Commission therefore approve Capital Quarries' application.

Mr. DiPardo asked whether Capital Quarries has been a good steward and have there been any problems?

Mr. Hopkins stated the company has always been responsive to any issue he has raised.

Mr. Jenkins made the motion the Commission approve the application for the permit and deny the request for a hearing inasmuch as he did not feel it has been shown that the public's health, safety, or livelihood will be unduly impaired by the issuance of this permit. Mr. Hull seconded; motion carried unanimously.

**Tillman Sand and Gravel, Permit Expansion** (Attachment 6). Mr. Zeaman stated that in January 2004, the Program received an in-stream permit expansion application that proposes to increase the company's mining operation an additional 13 acres on two new sites in Mikes and Brush Creeks in McDonald County. The proposed mine operation time frame is to the year 2029. After the application was deemed complete, the company published a public notice in a local newspaper in McDonald County. The company also sent by certified mail a notice of intent to operate a surface mine to the appropriate planning officials and adjacent landowners. During the public comment period following the initial publication of the public notice, the Staff Director received 14 letters concerning this proposed operation. A public meeting was held on May 12, 2004, during which a number of issues were raised. However, that public meeting did not resolve all of the concerns voiced by the public. The Land Reclamation Act addresses the issues of permitting/operation requirements, mining and the environment, permit denial, no bond required, other operators in McDonald County, protection of wildlife/aquatic resources, proposed sand and gravel rulemaking, hydraulic siphoning, and a request for a hearing. The Missouri Department of Natural Resources has laws that address air pollution, river/stream classifications, and water pollution concerns. The Department does not provide protection concerning travel way safety issues, environmental impact statements, State Environmental Policy Act, professional concerns, recreation, property devaluation, noise pollution, emergency storm weather procedures, tax per ton of gravel, or a citizens' watch committee. The Land Reclamation Act requires that the Staff Director make a formal recommendation regarding the issuance or denial of an applicant's permit. In addition, the Act requires the Staff Director to consider any written comments when making the notice of recommendation. After consideration of issues raised during the May 12, 2004, public meeting, comments provided in letters and in the comment box, it is the Staff Director's recommendation to issue the permit expansion application involving 13 acres in McDonald County sought by Tillman Sand and Gravel. The Staff Director did recommend approval of the pending mining permit application because the company has satisfied all of the requirements of The Land Reclamation Act.

Mr. Ziehmer asked, as proposed compared to the recent sand and gravel guidelines, how do the techniques proposed for removing gravel compare with those guidelines?

Mr. Zeaman stated they do not vary from it. It is just a stream protection plan that provides buffer zones in the flowing stream portions, but when the Brush Creek goes dry, there is no stream bank buffer zone requirement.

Mr. Harold Hess stated he and his wife live on a road that is a proposed gravel transport from the creek to Pea Ridge, Arkansas, which is 26 miles. They are the only house on the road, and they purchased the house at that location 25 years ago because it is where he could be where there isn't a lot of traffic. Mr. Hess stated he has been on disability since 1984 for his chronic asthma. He stated he has had a history of asthma and COPD. Mrs. Hess stated they feel the dust will be a big detriment to his health. Mrs. Hess noted there is also concern about the safety of the road because there is a huge cave underneath the road. Mrs. Hess stated her husband has developed within the last two years a decrease in mental ability and also the stumbling/falling tremors. This is a concern because their house is on one side of the road and the garage is on the other side of the road. They do go back and forth across the road several times a day. She stated her husband has fallen. Medical information and letters from Mr. Hess's doctors were passed out to the Commission for review. Mr. Hess stated he is on breathing machines to assist with his breathing in and out at night.

Ms. Elaine Van Dyken stated they own the land on which Tillman Sand and Gravel has asked for a permit to take the gravel out of Mikes and Brush Creeks. She stated they have lived there for 28-1/2 years. Up until about four or five years ago, the state and county took gravel out of the creeks and placed it on the roads in the area. There was no complaint about the dust then. However, there were complaints about rocks being thrown up when vehicles passed at persons following them on the roads. So the county and state stopped taking gravel out of the creeks. Since then, the gravel has built up so high that it is above the property line. There is gravel all over their bottomland. In May 2002, there was a huge rain. The flooding was horrendous. Two years before that, the water came underneath their barn, lifted it up, and turned it over. From the flooding in 2002, the sides of their house buckled, and they had to have the whole basement sealed which cost \$15,000.00. They did not have flood insurance. They still have cracked walls. As far as trucks and dust, logging trucks and Tyson's trucks have used that same road that Mr. Hess lives on. These trucks have also passed over the cave without incident. Her husband had a backhoe service and passed over that road without incident. Ms. Van Dyken stated since the flooding of their home in 2002, they have had mold problems; and they constantly have to use bleach. She stated both she and her husband take prescription sinus medicine daily. If they want to see their grandchildren, they have to go to their house because of the mold problems. If this flooding continues, they will lose their home. Regarding the killing of fish, in the summer, Brush Creek goes dry because the gravel is so high that the water goes under the creek and pools. These areas contain small fish, and when the water goes down, the fish die. Ms. Van Dyken stated they have counted five or six eagles (not 50 or 60) living in the hills above their property. They do

not seem to be bothered by the sound of farm machinery or a backhoe. Ms. Van Dyken stated there are no houses on their road for a long stretch so nobody else could be disturbed by the sound of the mining equipment. She stated she did not feel anyone would be hurt by the mining operation. They would be helped because their home would be saved. She did not feel the land would be devalued, but that it would increase in value. If the creeks were cleaned out, it would be a great improvement. She also stated her husband has checked out one of Mr. Tillman's sites, and Mr. Tillman has done a remarkable job. She urged that the Commission approve the permit so that the work can begin, because every time there is a heavy rain, they are worried that their home will be destroyed.

Mr. Hess stated the only way Mr. Tillman can get out of the area with his trucks is to pass his house. There is at least one other road that he could go. But the one past his house is a shortcut. He stated he did not need that dust. He said neighbors go out of their way to slow down past his house so as to keep the dust down. The county stoned the road directly in front of his house so he would not have so much dust, but it still has not made a lot of difference. His house is the only one on that road, so no one else is involved.

Mr. Tillman stated he did not think his trucks would be going more than 10 miles per hour up that hill. He felt the operation would help Mr. and Mrs. Van Dyken. He did not want any hard feelings with anyone. The gravel operation would not impact anything because they would be staying out of the water, and he felt, in the end, everyone would be happy.

Mr. Jenkins made the motion that the Commission grant the permit to Mr. Tillman and deny the request for a hearing. Mr. Ziehmer seconded; motion carried.

**Houston Redi-Mix, Permit Expansion** (Attachment 7). Mr. Zeaman stated the Program received a permit expansion application in March 2004 from Houston Redi-Mix which proposes to increase their in-stream mining operation for a new 2-acre site on Bean Creek in Texas County. The proposed mine operation time frame is to the year 2050. After the application was deemed complete, the company published the required public notice in a newspaper of general circulation in Texas County. The company also sent a notice of intent to operate a surface mine, by certified mail, to the appropriate planning officials and adjacent landowners. During the public comment period following the initial publication of the public notice, the Staff Director received one letter concerning the proposed in-stream permit expansion. The company attempted to meet with the hearing request petitioner to resolve the concerns; however, it was unsuccessful. Since the petitioner's issues are not resolved, this request for a formal hearing is being presented to the Commission. The Land Reclamation Act addresses issues of redirecting the flow of water in a stream environment and the request for a hearing. The Department of Natural Resources has laws that address water pollution concerns. The Department does not



provide protection concerning noise pollution or water quantity. Mr. Zeaman stated The Land Reclamation Act requires that the Staff Director make a formal recommendation regarding the issuance or denial of an applicant's permit and also requires that the Staff Director consider any written comments when making the notice of recommendation. After consideration of all issues raised in the letter, the Staff Director recommends approval of the pending mining permit expansion application because the company has satisfied all the requirements of The Land Reclamation Act. He stated that the Staff Director received a telephone call from Mr. Eugene Maxey, the landowner of where the proposed mining site is located. Mr. Maxey supports the issuance of this permit.

It was noted that the petitioner requesting the hearing was not present at this meeting.

Mr. Mike Manier, the operator of Houston Redi-Mix, stated this operation would be a small sand bar and would be an intermittent operation. The company has tried to be knowledgeable about the operation of the stream protection plan so as to do minimal damage to the environment. He stated he did not want to have any of the neighbors unhappy with the company. Mr. Manier stated some days there might be 1, 2, or 4 trucks a day, some days no trucks. He stated he will do his best to follow the company's stream protection plan and keep the disturbance to a minimum.

Mr. Hull made the motion the Commission deny the request for a public hearing and issue the permit to Houston Redi-Mix. Dr. Haddock seconded; motion carried unanimously.

### 3. ENFORCEMENT

**W. A. Dillon Clay Mining Company, Formal Complaint** (Attachment 8). Mr. Larsen stated the company was issued a Notice of Violation in November 2003 for failure to reclaim one clay pit within the time frames specified in the law and rules. The company was allowed additional time to complete this reclamation on two different occasions, with the latest modified abatement due date set for May 15, 2004. The operator cited adverse weather conditions during the previous three months as the basis for the second extension of time request. An informal conference was held in January 2004. The Staff Director upheld the violation and lowered the proposed penalty from \$870.00 to \$470.00. A Settlement Agreement was prepared and sent to the company. However, the company did not sign the agreement. No work had been done at the site. During a phone conversation with the operator on June 23, 2004, it was indicated that the company no longer was able to continue with the abatement of the violation and that the company was out of funds and was no longer able to continue in the business of mining. The operator has been in ailing health for some time. Mr. Larsen stated he advised the operator that the law required that the Program move forward with the Formal Complaint. The operator indicated they would not contest that, would not request a hearing, and would

not be able to abate the violation. Mr. Larsen stated that he advised the operator that failure to address the Formal Complaint would result in permit revocation and bond forfeiture, which they understood. Mr. Larsen stated the recommendation is that the Commission approve this Formal Complaint as submitted by the Staff Director

Dr. Haddock made the motion to approve the Formal Complaint for W. A. Dillon Clay Mining Company as recommended by the Staff Director. Mr. Ziehmer seconded; motion carried unanimously.

4. BOND RELEASES

**Summary of Industrial Minerals Bonds Released by Staff Director.** Due to equipment failure, this item was postponed until the September Commission meeting.

5. OTHER BUSINESS

**Update on Industrial Minerals Rulemakings.** Mr. Larsen stated there are two rulemaking packages. The first is the in-stream sand and gravel rulemaking package. The Commission adopted the Orders of Rulemaking on April 30, 2004, and these Orders have been filed with the Joint Committee on Administrative Rules (JCAR). There were no objections to them. Following the 30 days that are allowed JCAR by statute, they were filed the 31<sup>st</sup> day with the Secretary of State. They are now awaiting publication in the *Missouri Register* which is scheduled for August 2, 2004. There will be no comments solicited. This is a procedural event that will take place. Thirty days after that, they will be published in the *Code of State Regulations* on August 30. They will then become effective on September 30, 2004.

Mr. Larsen stated the second rulemaking package that is waiting to be filed as Proposed Rules are the rules that were written as the result of the amendments to The Land Reclamation Act in 2001. The work group took approximately 8-9 months to write these rules. They were held back until the in-stream sand and gravel rules (the priority rules) could be developed and filed. Mr. Larsen noted that changes can not be filed to those two rules on top of the sand and gravel rules until the sand and gravel rules have run their course. The Secretary of State's Office refers to this as "stacking rule changes." This is not allowed. Therefore, the general rules that have been changed as the result of the law change have had to wait until the sand and gravel rules have run their course. It was anticipated that these general rule changes would be filed September 1, 2004. However, the Governor has just signed legislation recently that may delay that because the Regulatory Impact Report, which is also a new component of the regulations, now has to have a public notice published in the newspaper and has to also be made available on the Department of Natural Resources' web site and the Land Reclamation Program's web site

for 60 days before they can be filed as proposed rules. Mr. Larsen stated this is another delay. He stated that the earliest day he could now file these rules is October 1, 2004. These will be Proposed Rules and could be subject to change as a result of the public comment period. It looks as if it will be next spring before these rules will become final.

**Commissioners' Core Work Group Recommended Operating Policies** (Attachment 9). Mr. Coen noted the Commissioners were sent a copy of these draft operating policies. He noted the Chairmen of the various environmental commissions were invited to be a part of a work group in which the Department of Natural Resources wanted to develop standard operating procedures for all of the commissions. This work group then published this recommended draft. He stated he had included the appropriate narrative for the Land Reclamation Commission. He also noted that a list of corrections from the Department Director's Office to the draft were also included. Mr. Coen stated that concerns from persons who attend more than one commission meeting of different commissions is that from their perspective, every commission is different and they don't know what to expect in the different ways that things happen. So there is the desire for the commission process to be more standardized in the Department. He suggested the Commission review the draft, make any suggestions for changes, and discuss it further at the September meeting. He noted that on page 6 of the draft under item 2, the paragraph regarding the status of a commission member who is absent from consecutive regular commission meetings (box around) should be decided by the Commission. He stated there is nothing in the Land Reclamation Commission law that speaks to that issue. Other laws for other commissions may address this issue. For the public members appointed by the Governor, this would probably not apply. Mr. Coen stated he has filled in the draft policy as it relates to the Land Reclamation Commission.

Ms. Garstang asked whether each commission or board is supposed to make this policy applicable to the particular make-up of the board or commission and how they operate?

Mr. Coen replied yes.

Dr. Haddock asked if Mr. Coen could highlight some of the biggest differences?

Mr. Coen stated that, for instance, the commissions don't deal with Closed Sessions all the same. This Commission has its Closed Session prior to the open meeting; some commissions have a Closed Session after the meeting; some commissions do the Closed Session in the middle of a meeting, at the point where they might need to talk, they go into another room and talk, and then return to the public meeting. It would be better for the public if they did not have to wait while a commission conducted a Closed Session in the middle of a public meeting.

### **Comments from the Public**

Mr. DeCuyper, landowner at Alternate Fuels, asked, regarding the Findings adopted by the Commission today, does that indicate that the permits for that company have been revoked and whether the bond money and CD's are forfeited so that the next course of action would be to proceed with awarding a contract to have someone continue with the reclamation of the site?

Ms. Randles stated the Findings adopted today regarding Alternate Fuels revokes all of the permits and forfeits all of the bonds.

Mr. Garcia, attorney for one of the surety companies at Alternate Fuels, stated he hoped this would provide the opportunity for a settlement so that reclamation could go forward.

**Closed Session.** Dr. Haddock made the motion that the Land Reclamation Commission meet in Closed Session at 8:30 a.m. on September 23, 2004, for the purpose of discussing personnel actions and legal actions, causes of actions, or litigation as provided for in Section 610.021, RSMo. Mr. Hull seconded; motion carried unanimously.

**Adjournment.** The meeting was adjourned at 12:20 p.m.

Respectfully submitted,

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Chairman